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CAUSE NO. C2024253

CITIZENS CONCERNED ABOUT WOLF HOLLOW Plaintiff, v. MARATHON DIGITAL HOLDINGS, INC. Defendant.	§ § § § § § § § § § § §	IN THE DISTRICT COURT HOOD COUNTY, TEXAS 355th JUDICIAL DISTRICT

PLAINTIFF'S OPPOSED MOTION TO COMPEL

CASES

STATUTES

RULES

I. SUMMARY

Plaintiff Citizens Concerned About Wolf Hollow ("Citizen Group") respectfully moves this Court to compel document production from Defendant MARA Holdings, Inc. ("MARA") pursuant to TEX. R. CIV. P. 215.1(b)(3)(D). Citizen Group seeks this relief because to date, MARA has failed to produce a single document in response to Citizen Group's First Set of Requests for Production (Exhibit 1). MARA's main objection—that it does not have to produce documents because Citizen Group lacks associational standing to bring a private nuisance lawsuit—is now moot since this Court denied MARA's Motion to Dismiss for Lack Subject Matter Jurisdiction. Nevertheless, MARA seeks to further delay timely production of documents (as it has done since the initiation of this case), this time by filing a Petition for Writ of Mandamus[1] in which it argues, once again, that Citizen Group does not have standing to bring a private nuisance claim. Because MARA refused multiple times in the past to produce even a single document on these baseless grounds, despite Citizen Group's good faith attempts at reaching consensus through negotiation, Citizen Group is left with no option but to request the Court's intervention.

Beyond the jurisdictional argument, the remainder of MARA's objections are without merit, including that Citizen Group's requests are disproportionate to the needs of the case, seek privileged and/or confidential information, and are vague or ambiguous. MARA also argues that producing documents would be burdensome, despite having been served with nearly identical requests for production in November of last year, when the matter was removed to the Northern District of Texas. (Exhibit 2). MARA's objections are baseless and only effectuate further delay. Citizen Group respectfully asks this Court to Order MARA to produce documents in response to the following RFPs: 1-15.

[1] *Citizens Concerned About Wolf Hollow v. Marathon Digital Holdings, Inc.*, No. 02-25-00440-CV (Tex. App.—Fort Worth, Aug. 27, 2025).

II. BACKGROUND

On October 4, 2024, Citizen Group sued MARA in this Court exclusively seeking injunctive relief from the nuisance conditions created by MARA's cryptomining operations. Pl.'s First Verified Pet., Appl. for Permanent Injunction and Req. for Disclosure ¶¶ 83-86. As alleged specifically in the lawsuit, Citizen Group cites unbearable, intrusive, and overwhelming noise from MARA's Cryptomine that interferes with Citizen Group members' continued use and enjoyment of their respective properties. Citizen Group believes that the noise comes, in part, from numerous industrial fans that are used to cool the cryptomining equipment. Pl.'s First Verified Pet. ¶¶ 16, 59, 76. As alleged in Citizen Group's amended pleading, these nuisance conditions began in 2023, became noticeably worse in the latter half of that year, and have continued up to the present date. Pl.'s First Am. Verified Pet. ¶¶ 36-51.

MARA's initial response to this lawsuit was to remove this case to the U.S. District Court for the Northern District of Texas, Fort Worth Division. In its federal court answers, MARA cites to its construction of a sound wall extension, its conversion of "units" to immersion cooling technology (from fan-cooled technology), and its deactivation of the fans closest to residential homes out as recognition of disruptions to the community caused by its operations. (Exhibit 3 at 2-3). Yet, even with such changes, Citizen Group's five members remain accosted by the MARA Cryptomine's noise and vibrations at all hours of the day and night and are no longer able to use and enjoy their properties as before. Pl.'s First Am. Verified Pet. ¶¶ 51-62. Citizen Group filed a Motion to Remand and the court eventually remanded this case back to Hood County.

While awaiting a ruling on its Motion to Remand, Citizen Group diligently pursued discovery. Citizen Group served *forty* requests for production on MARA in November of 2024. From the onset of discovery, MARA sought to stall Citizen Group's attempts to obtain any

documents, all relevant to its equipment and operations. Citizen Group's counsel met with MARA's counsel several times and on each occasion, Citizen Group's counsel reiterated its willingness to sign the Northern District of Texas' Standard Protective Order ("Standard Order") in order to address MARA's concerns regarding confidential, proprietary, and/or trade secret information. (Exhibits 4, 5, & 6). Eventually, MARA filed a Motion for Protection and Citizen Group filed its own Motion to Compel. The matter was remanded back to this Court before the Northern District of Texas could rule on either of these two discovery motions. On May 1, 2025, MARA filed its Motion to Dismiss Plaintiff's Petition for Lack of Jurisdiction—challenging Citizen Group's associational standing—and eventually set the motion for hearing on July 23.

On May 19, 2025, Citizen Group served its First Request for Production of Documents ("RFPs") (Exhibit 1) under Rule 196 of the Texas Rules of Civil Procedure which included fifteen of the forty RFPs that Citizen Group had previously served on MARA during the federal court discovery process.[2] On June 13, MARA filed its Motion for Protection and to Stay discovery and, three days later, MARA served its Response to Plaintiff's First Request for Production of Documents ("MARA's Response") (Exhibit 2) in which it made global objections based on its then outstanding Motion to Dismiss Citizen Group's Petition for Lack of Jurisdiction and based on Citizen Group's requests that seek information from the years prior to MARA's ownership of the Cryptomine. MARA also provided objections to each one of Citizen Group's fifteen RFPs including that requests are vague, that Citizen Group seeks confidential and/or proprietary information, and that Citizen Group's requests lack proportionality and are harassing. MARA also objected to several RFPs as unduly burdensome, despite MARA having these same requests for

[2] Citizen Group takes this opportunity to note that the language in two of the fifteen RFPs was slightly different than those that had been served during the federal discovery process: RFP (1) Citizen Group removed one piece of information that it had previously sought in federal discovery and RFP (15) Citizen Group added information from calendar year 2025 to the request.

over nine months. Importantly, MARA failed to produce a single document in response to Citizen Group's RFPs and failed to provide evidence or otherwise substantiate its proportionality objections.

On June 24, MARA filed its Motion to Compel Discovery, which was added to the hearing for July 23 along with MARA's Motion for Protection. At the hearing on July 23, 2025, this Court denied MARA's Motion to Dismiss. At the Court's direction, the parties conferred and agreed to a temporary stay to discovery, based on MARA's representation that it would be filing a writ *close in time to the hearing*, to challenge the Court's denial of its Motion to Dismiss.

On August 27 (well over a month after the parties agreed to a temporary stay) MARA filed its Petition for Writ of Mandamus arguing that Citizen Group does not have associational standing—the same argument it made in its unsuccessful Motion to Dismiss, and the same reasoning it used in the past to object to discovery and refuse the production of documents. Citizen Group is left with no option but to turn to the Court for relief given MARA's position. (Exhibit 7).

III. ARGUMENT AND AUTHORITIES

MARA has failed to produce a single document in response to Citizen Group's RFPs served pursuant to TEX. R. CIV. P. 196. Texas Rule of Civil Procedure 215.1 authorizes motions to compel discovery if a party fails to permit discovery as requested in response to these requests. TEX. R. CIV. P. 215.1(b)(3)(D). Generally, Rule 215.1 provides that a party seeking discovery may move for an order compelling inspection or in accordance with a request against another party when the latter has failed to produce documents requested under Rule 196. TEX. R. CIV. P. 215.1(b)(3)(D).

Citizen Group is entitled to discovery because the information it seeks is "not privileged and is relevant to the subject matter of the pending action" and because "the information sought

appears reasonably calculated to lead to the discovery of admissible evidence." TEX. R. CIV. P. 192.3(a). Further, Citizen Group "may obtain discovery of [MARA's] legal contentions and the factual bases for these contentions." TEX. R. CIV. P. 192.3(j). The rule regarding what is relevant is to be liberally construed. *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990); *see also In re Nat'l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016) (stating that what is relevant to the subject matter has liberal bounds). Citizen Group has tailored its discovery requests to include only matters relevant to its private nuisance suit. *In re CSX Corp*., 124 S.W.3d 149, 152 (Tex. 2003) (quoting *In re Am. Optical*, 988 S.W.2d 711, 713 (Tex. 1998)). Thus, MARA bears the burden of proving why the information Citizen Group requests is not subject to discovery. *Axelson,* 798 S.W.2d at 553 n.6. (explaining that a party resisting discovery must prove documents are privileged or otherwise not subject to discovery). Further, MARA failed to carry its burden to prove that the RFPs do not meet the proportionality standard when it objected that the RFPs are unduly burdensome or harassing. TEX. R. CIV. P. 192.4(b); *see also In re K & L Auto Crushers, LLC*, 627 S.W.3d 239, 253 (Tex. 2021). Because of MARA's refusal to cooperate in discovery, Citizen Group moves to compel under TEX. R. CIV. P. 215.1 for the following reasons:

First, the RFPs are relevant to Citizen Group's claim and MARA's affirmative defenses under TEX. R. CIV. P. 192.3(a). *See* RFPs 1-11, 13-15. Second, MARA failed to provide evidence on how Citizen Group's requests are disproportionate to the needs of the case, are unduly burdensome, or are harassing in nature, and the five considerations under TEX. R. CIV. P. 192.4 favor production. *See* RFPs: 2-5, 7-10, 12-15. Third, Citizen Group specifically seeks only *nonprivileged information*, and not information that MARA gathered in preparation of litigation or that is otherwise covered by privilege. *See* RFP: 7. Fourth, MARA's objections based on protecting proprietary information are unfounded because Citizen Group has negotiated in good

faith for a signed protective order that allows Citizen Group access to documents while also addressing MARA's concerns over confidential/proprietary/trade secret information, and MARA has not provided adequate reason why such a negotiated protective order is insufficient. *See* RFPs: 1, 3-5, 8-11, 13-15. Finally, the remainder of MARA's objections that Citizen Group's requests are vague, ambiguous, or lack specificity are without merit. *See* RFPs:1, 3-5, 8-15. For all these reasons, MARA must be compelled to produce responsive documents for the above-mentioned RFPs.

A. MARA Must be Compelled to Produce Documents because Citizen Group's Requests are Relevant to its Claims and MARA's Affirmative Defenses

As the party resisting discovery, MARA failed to carry its burden to both specify why RFPs (1-11, 13-15) are not relevant to the case. This Court should therefore compel MARA to respond to the above-listed RFPs. Consistent with broad discovery rules, these RFPs seek information that is "not privileged and is relevant to the subject matter of the pending action…" TEX. R. CIV. P. 192.3(a); *see also In re Nat'l Lloyds Ins. Co*, 449 S.W.3d 486, 488 (Tex. 2014) (stating what is relevant to the subject matter is to be broadly construed). Specifically, Citizen Group's requests are relevant to its claim for the legal injury of private nuisance and to MARA's affirmative defenses.

1. Citizen Group's Requests are Relevant to Establishing the Elements of a Private Nuisance Claim Under Texas Law

Relevancy must be liberally construed to allow Citizen Group to obtain the fullest knowledge of the facts and issues before trial. *Axelson,* 798 S.W.2d at 553 (explaining that it is an abuse of discretion to not allow discovery of matters that might reasonably lead to evidence that a party's conduct led to an action that was subject matter of litigation). In this case, Citizen Group seeks an injunction for the nuisance conditions that MARA created. The Texas Supreme Court

affirmed the comprehensive definition of a private nuisance as "a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy it." *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 593 (Tex. 2016). Per this definition, Citizen Group must prove that: 1) noise and vibrations from the MARA Cryptomine substantially interfered with Citizen Groups' members' interest in their land, 2) that this substantial interference caused unreasonable discomfort or annoyance, 3) that MARA negligently or intentionally caused or maintained the condition, and 4) that the condition constitutes a nuisance injury to Citizen Group. *Id.* Citizen Group's requests (RFPs: 1-11, 13-15) seek relevant information that is of consequence to the determination of the action. *See In re Reyna*, No. 13-24-00158-CV, 2024 WL 3943451, at *3 (Tex. App.—Corpus Christi-Edinburg, Aug. 26, 2024). In this case, the claim is the legal injury of private nuisance and consideration of the instrumentality of the alleged injury shows that these requests are relevant. *In re Sun Coast Res., Inc*., 562 S.W.3d 138, 146 (Tex. App.—Houston [14th Dist.] 2018, orig. proceeding). Thus, MARA must be compelled to respond.

a) *MARA Must Produce Documents Regarding Substantial Interference and Unreasonable Discomfort or Annoyance*

Citizen Group's requests are relevant to establishing the first and second elements of a private nuisance—substantial interference and unreasonable discomfort or annoyance. *Crosstex,* 505 S.W.3d at 597. When assessing "substantial interference" and "unreasonable discomfort or annoyance" courts will consider the following (non-exhaustive) factors:

1. the character and nature of the neighborhood, each party's land usage, and social expectations;
2. the location of each party's land and the nature of that locality;
3. the extent to which others in the vicinity are engaging in similar conduct in the use of their land;
4. the social utility of each property's usage;

5. the tendency or likelihood that the defendant's conduct will cause interference with the plaintiff's use and enjoyment of their land;
6. the magnitude, extent, degree, frequency, or duration of the interference and resulting harm;
7. the relative capacity of each party to bear the burden of ceasing or mitigating the usage of their land;
8. the timing of each party's conduct or usage that creates the conflict;
9. the defendant's motive in causing the interference; and
10. the interests of the community and the public at large.

Id. at 600. When considering what is *substantial* and *unreasonable*, Courts look at evidence that noise from the offending party was extremely loud, caused vibrations on nearby land, is constant whenever the offending party operates, caused residents to consider moving, and was intense and frequent in nature, among other considerations. *Id.* at 612; *see also Hot Rod Hill Motor Park v. Triolo*, 276 S.W.3d 565, 568-74 (Tex. App.—Waco 2008, no pet.). In this case, the insufferable noise at all hours of the day and night (along with vibrations) began in 2023, worsened significantly later that year, and remains ongoing, continuing to cause harm and injury to Citizen Group. (ECF No. 27-1, at ¶¶ 13-18, 35-62). Citizen Group's requests seek discovery on matters that address the *Crosstex* factors that are essential to understanding the "substantial" interference and "unreasonable" discomfort or annoyance caused by the MARA Cryptomine for members of Citizen Group. As the chart below demonstrates, Citizen Group's RFPs are tailored to seek information relevant to the *Crosstex* factors.

Request for Production (No.)	*Crosstex* Factor	Types of Documents
RFPs: 6, 7	"the location and nature of each party's land"	Noise and vibration data and studies.
RFPs: 1-4, 6-10, 13-15	"likelihood that conduct will cause interference with and enjoyment of land"	Types of cryptominers and fans, and other cooling technology, noise and vibration data and studies, mitigation measures, and invoices or receipts for cryptominers and cooling technology.

RFPs: 1, 2, 4, 6, 7	"magnitude, extent, degree, frequency, or duration of the interference"	Types of cryptominers and fans, mitigation measures, noise and vibration data and studies.
RFPs: 2, 5, 8, 13-15	"relative capacity of each party to bear the burden of ceasing or mitigating the usage of their land"	Mitigation measures, cooling technologies, invoices and receipts for equipment, and operation of cryptomining equipment.
RFPs: 1, 3-7, 11	"timing of each party's conduct or usage that creates the conflict"	Types of cryptominers and fans, cooling technologies, noise and vibration data and studies, data processing methods.
RFP: 11	"motive in causing the interference"	Data processing methods.

Each of these requests are relevant to proving that MARA's interference is "substantial" and that it causes "unreasonable" discomfort or annoyance. *Crosstex,* 505 S.W.3d at 600. MARA must be compelled to produce responsive documents.

b) *MARA Must Produce Documents Regarding MARA's Creation and/or Maintenance of Nuisance Conditions*

Citizen Group's requests (RFPs: 2, 5, 8-10, 13-15) are relevant to establish the third element of a nuisance case: that MARA negligently or intentionally caused or maintained the condition. *Crosstex*, 505 S.W.3d at 607. Thus, Citizen Group is permitted to seek discovery regarding MARA's duty to use ordinary care and to act as a party of ordinary prudence would under the same or similar circumstances. *Id.* at 614. The referenced RFPs seek discovery regarding MARA's conduct and whether it is "doing or failing to do what a person of ordinary prudence in the same or similar circumstances would have not done or done." *Id.* at 607 (quoting *Timberwalk*

Apartments, Partners, Inc. v. Cain, 972 S.W.2d 749, 753 (Tex. 1998)). In *Crosstex*, the Court found that the defendant's breach of duty to use ordinary care was evidenced by the defendant building and operating the compressor station in a way that "its noise was beyond reasonable levels". *Crosstex*, 505 S.W.3d at 614. Additional evidence included testimony that the noise was louder than defendant expected, that defendant's mitigation efforts did not lessen the noise interference, and that defendant could have implemented other mitigation measures but chose not to because of cost considerations. *Id.*

Therefore, evidence of any mitigation measures considered by MARA (RFP 2), may support a finding that MARA created, and sought to mitigate, a nuisance. *Id.* at 612. Further, Citizen Group's request for documents regarding fans and other cooling technologies as well as documents showing the timeline for purchase, delivery, and operation of mining equipment are relevant to the question of whether MARA "is doing or failing to do what a person of ordinary prudence in the same or similar circumstances would have not done or done." *Id*. at 607 (quoting *Timberwalk, 972 S.W.2d at 753*); (RFPs: 2, 5, 8-10, 13-15).

MARA's objection that requests seeking information prior to its ownership of the Cryptomine is misplaced and MARA must be compelled to produce documents that exist from that time period. Citizen Group is entitled to discovery on matters that created or contributed to the nuisance conditions in 2023 and that resulted in the worsening of nuisance conditions later that year because such information is "the fullest knowledge of the facts" that are relevant to Citizen Group's claim. *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 664 (Tex. 2009). The time-period is not overbroad or unreasonably long. *In re CSX Corp*., 124 S.W.3d at 152. Citizen Group's requests concerning information prior to MARA's ownership are relevant because that is when members first perceived the nuisance Pl.'s First Am. Verified Pet. ¶¶ 36-50.

2. MARA Must Produce Documents Responsive to Requests About its Affirmative Defenses

Citizen Group may seek discovery on any nonprivileged matter relevant to the affirmative defenses that MARA pleads. TEX. R. CIV. P. 192.3(a); *see also In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 180 n.1 (Tex. 1999) (stating relevancy is determined on a close examination of the pleadings and specific defenses made). Thus, Citizen Group's seeks discovery on matters related to statute of limitations and laches (RFPs: 1-10, 13-15), both of which have a time element.

Because MARA asserts statute of limitations, Citizen Group is entitled to discovery on matters in the two years preceding the initiation of the lawsuit in October 2024. *Schneider Nat'l Carriers, Inc. v. Bates*, 147 S.W.3d 264, 270 (Tex. 2004) ("[t]he limitations period for a private nuisance claim is two years"); *see also* Texas Civil Practice & Remedies Code § 16.003(a). Given the limitation period, MARA's refusal to provide documents from the two years preceding the lawsuit lacks merit. Additionally, Citizen Group alleges that the nuisance began at some point in 2023 and *worsened* in the latter part of that year. Pl.'s First Am. Verified Pet. ¶¶ 36-50. Because change in conditions is an exception to the standard statute of limitations rule, Citizen Group is entitled to seek discovery on matters that demonstrate "when the nature of a nuisance is substantially changed." *Schneider Nat'l Carriers, Inc.,*147 S.W.3d at 279-80 ("an old nuisance does not excuse a new and different one."); *see also Atlas Chem. Indus., Inc. v. Anderson*, 524 S.W.2d 681, 685-87 (Tex. 1975) (limitations is not a bar when a manufacturing plant that discharged pollutants upstream from plaintiff for several decades began creating a nuisance in new and different ways). MARA alleges that it took measures to address the nuisance: it deactivated fans closest to residential homes, broke ground on a sound wall extension, converted units to immersion cooling technology, and claims to be working on an array of additional improvement options (Exhibit 3 at 2-3). Given these assertions, Citizen Group properly seeks discovery on

matters that may demonstrate a change in conditions at the MARA Cryptomine to explain the change in the nature of the nuisance, including the above-mentioned mitigation steps MARA took.

Regarding MARA's next affirmative defense, "laches will not bar an action before the limitation period has run." *Delta Cnty. Levee Imp. Dist. No. 2 v. Leonard*, 516 S.W.2d 911, 913 (Tex. 1974); *see also Rogers v. Ricane Enters., Inc*., 772 S.W.2d 76, 80 (Tex. 1989) (one essential element for laches is "(1) *unreasonable delay* by one having legal or equitable rights in asserting them…"). Thus, Citizen Group seeks discovery on matters related to timing and that are relative to when Citizen Group sought court-ordered relief. *City of Houston v. Muse*, 788 S.W.2d 419, 422 (Tex. App.—Houston [1st Dist.] 1990, no writ) (the court considered how long it took a party to bring a suit after learning of actionable violations to determine if an unreasonable time had passed).

In conclusion, Citizen Group's requests regarding the *timing* and *sequencing* for purchase, delivery, and operation of mining equipment, the *timing* of noise and vibration data and studies, and the *timing* of mitigation measures implementation, are directly relevant to the affirmative defenses of statute of limitations and laches. (RFPs: 1-10, 13-15). These RFPs conform to Rule 192.3 and MARA must be compelled to produce documents.

B. MARA Failed to Show Citizen Group's Requests Lack Proportionality, are Burdensome, or Harassing

MARA fails to show that the benefit of certain requests (RFPs: 2-5, 7-10, 12-15) is outweighed by the burden or expense in producing responsive documents and, for this reason, its objections should be overruled and MARA must be compelled to produce documents. TEX. R. CIV. P. 192.4; *see also In re USAA Gen. Indem. Co*., 624 S.W.3d 782, 788 (Tex. 2021). MARA does not support its proportionality, harassment, and undue burden objections with evidence and relies solely on conclusory allegations. *In re K & L Auto Crushers, LLC*, 627 S.W.3d at 253. These bare, unsupported objections do not show "particular, specific, demonstrable injury" *In re Collins*, 286

S.W.3d 911, 919 (Tex. 2009). Therefore, MARA fails to prove Citizen Group's requests are not proportional to the needs of the case. *In re K & L Auto Crushers, LLC*, 627 S.W.3d at 253; *see also In re Alford Chevrolet-Geo*, 997 S.W.2d at 181.

MARA does not carry its burden to show that the expense of these requests outweighs their likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake, and of the proposed discovery to resolving the issues. TEX. R. CIV. P. 192.4(b). Here, MARA did not submit any evidence in its responses to RFPs to support its objections based on proportionality, harassment, or undue burden, and, thus, failed to substantiate its allegations, making them conclusory. *In re HW&B Enterprises LLC*, No. 13-24-00463-CV, 2024 WL 4958268, at *5 (Tex. App.—Corpus Christi-Edinburg, Dec. 3, 2024,orig. proceeding) (mem. op). Nevertheless, the five proportionality factors of Rule 192.4 weigh in favor of Citizen Group's discovery requests. First, the needs of the case require MARA to respond to Citizen Group's requests for all the reasons above in Section III.A. Specifically, Citizen Group's requests seek information that is necessary for proving the elements of a private nuisance and for assessing the strength of MARA's affirmative defenses.

The second factor also weighs in favor of discovery. Although there is no amount in controversy, Citizen Group requires access to documents that demonstrate how, why, when, and under what circumstances MARA creates these nuisance conditions, to assist the court in fashioning a permanent injunction. *Schneider Nat'l Carriers, Inc.,* 147 S.W.3d at 287 (a judge must draw narrow, precise permanent injunctions). Further, to have the requested permanent injunction issued, Citizen Group must prove a wrongful act, imminent harm, an irreparable injury, and the absence of an adequate remedy at law. *Huynh v. Blanchard*, 694 S.W.3d 648, 674 (Tex. 2024) (when assessing the factors for an injunction, courts consider how offending party operated,

its activities and effects, whether offending party has attempted to mitigate, and if it intends to operate the same way in the future). This Court cannot assess these factors without access to the requested discovery.

The third factor—the parties' resources—also weighs in favor of discovery. In the present case, the discovery cannot be obtained from any source other than MARA itself. MARA's pleadings demonstrate that it has vast resources, describing its company as "part of a growing bitcoin industry in Texas" where it has "invested $343 million into the facility," anticipates $18 million in tax revenue, and donated "$100,000" to the local community. (ECF No. 24, at 2). MARA has more than adequate resources and it will not be burdened by production. Indeed, these RFPs served in May of 2025 are nearly identical to RFPs served in November of 2024 (with inconsequential changes made to two of the fifteen) such that MARA cannot argue there is burden to its resources in identifying, reviewing, and producing documents that it should have been reviewing for more than nine months.

Fourth, the issues at stake in this litigation implicate fundamental property rights principles: the right of Citizen Group's members to the use and enjoyment of their land, free from the ongoing, constant, and substantial nuisance conditions from MARA Cryptomine. Also at issue is MARA's obligation to manage its operations in a way that does not compel nearby residents to live in discomfort, even though the discomfort might be "caused by a lawful" business. *Crosstex*, 505 S.W.3d at 593 (quoting *Storey v. Cent. Hide & Rendering Co*., 226 S.W.2d 615, 618 (Tex. 1950)).

The fifth and final factor—the importance of the discovery in resolving the issues—weighs in favor of discovery. Citizen Group's claim depends on access to documents that show the types of equipment and cooling systems onsite that are the sources of sound and vibrations. Further, Citizen Group's discovery regarding MARA's duty of care, how the nuisance first materialized

and later worsened, mitigation measures MARA considered, the computing processes that control the running of machinery, noise data and studies, and the timeline for the acquisition and operation of machinery that create the nuisance conditions are all important to the ultimate issue of whether MARA has negligently or intentionally caused a condition that constitutes a private nuisance.

For all the above reasons, the benefit to Citizen Group of its proposed discovery is not outweighed by the burden or expense to MARA. TEX. R. CIV. P. 192.4(b). Citizen Group's requests are, therefore, proportional and MARA must be compelled to produce documents.

C. MARA Must be Compelled to Produce Documents because Citizen Group Seeks Exclusively Nonprivileged Matters

This Court should grant this Motion to Compel and overrule MARA's objection having to do with "privilege" (RFPs: 7) because MARA failed to provide evidence when objecting to the material as privileged. *See In re Nat'l Lloyds Ins. Co.,* 532 S.W.3d 794, 804 (Tex. 2017) ("[t]he party asserting a privilege in opposition to a discovery request must establish by testimony or affidavit a prima facie case for the privilege") (internal quotes omitted). MARA did not carry its burden to prove the privilege, and this objection should be overruled. *In re E.I. DuPont de Nemours & Co*., 136 S.W.3d 218, 225 (Tex. 2004).

The Texas Rules of Civil Procedure allow Citizen Group to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action…" TEX. R. CIV. P. 192.3(a). Thus, even in RFP 7 where Citizen Group did not explicitly state that it was requesting "non-privileged" discovery around noise and vibration research "collected, gathered, analyzed, and/or reviewed by Defendant." MARA should have produced any noise/vibration research documents and the results of any testing that was not undertaken in anticipation of litigation or at the direction of counsel, or completed by a consultant, or subject to attorney-client privilege, the work-product doctrine, or the consulting expert privilege.

D. MARA Must be Compelled to Produce Documents because Citizen Group Agreed to Negotiate a Protective Order to Expedite Discovery

This Court should grant this Motion to Compel because Citizen Group negotiated in good faith with MARA during the federal discovery process regarding a protective order that—if signed—would have addressed MARA's concerns stemming from the trade secret privilege and having to do with confidential, proprietary, and trade secret information (RFPs: 1, 3-5, 8-11, 13-15). During that negotiation process, MARA did not provide adequate reason why the Standard Order would not have protected its proprietary interests. As demonstrated by several letters sent by Citizen Group's counsel, Citizen Group offered to sign the Standard Order on multiple occasions while also offering limited revisions to the Standard Order to resolve concerns particular to MARA (*See* Exhibit 4 pg. 1; Exhibit 5 pg.1; & Exhibit 6 pg. 3). Each time, MARA refused to sign and did not provide any reason to substantiate how and why the Standard Order would not protect confidential, trade secret, or proprietary interests. MARA must be compelled to produce records.

E. MARA Must be Compelled to Respond because the Remaining Objections about Lack of Specificity are Unsupported

MARA failed to prove that certain terms are 'vague, ambiguous, or lacking in specificity' when it made those objections (RFPs:1, 3-5, 8-15) and for this reason it must be compelled to produce responsive documents. *See Chamberlain v. Cherry*, 818 S.W.2d 201, 205 (Tex. App.—Amarillo 1991, orig. proceeding) (stating that because a party failed to plead or prove that specific requests were vague or ambiguous, the party is not entitled to protection from production).

MARA has not proven that Citizen Group's use of the terms 'form of inventory' and 'form of inventory listing,', 'similar records,' 'purchase or acquisition documents,' 'Corporate Retention Policies' (RFPs: 1, 3-5, 8-10, 12) are vague, ambiguous, or lacking in specificity, since Citizen

Group's requests provided examples and context for each of the terms in the specific requests themselves. For example, RFP 8 provided examples of what 'similar records' could mean when it employed the use of words like 'inventories, bills of lading, proofs of delivery, shipping manifests, charter orders.' Similarly, RFP 5 utilized terms like month-to-month list, chart, and spreadsheet, alongside the use of the term 'form of inventory listing.' It is patently unfair and in bad faith for MARA to argue that these terms are vague or lacking in specificity. MARA also contends that the requests use of terms 'Mining and Data Processing methods,' and 'came online, or became operational, and began functioning' (RFPs: 11, 13-15) are vague, but this claim is without merit. The meaning of these terms is easily defined within the context of this lawsuit. *In re Brookfield Infrastructure Group, LLC*, No. 13-17-00486-CV, 2018 WL 1725467, at *8 (Tex. App.—Corpus Christi-Edinburg Apr. 9, 2018, orig. proceeding) (mem. op.). MARA, a sophisticated party in the Cyrptomining industry, is expected to exercise reason and common sense to attribute ordinary definitions to terms and phrases used in discovery. MARA fails to prove that the specific RFPs are vague or ambiguous when, in fact, the meaning of specific terms is apparent from the context of the lawsuit. Thus, MARA's objections to these requests should be overruled and MARA compelled to produce responsive documents.

IV. CONCLUSION

For these reasons Citizen Group respectfully asks that the Court grant its Motion to Compel and order MARA to produce documents responsive to the following requests: 1-15.

Dated: September 2, 2025

Respectfully submitted,

By: /s/ *Rodrigo G. Cantú*
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CERTIFICATE OF CONFERENCE

I certify that on August 22 and September 2, 2025, I conferred with Robert Thackston, attorney for Defendant, and he is opposed to the foregoing Motion to Compel.

/s/ Rodrigo G. Cantú
Rodrigo G. Cantú

CERTIFICATE OF SERVICE

I certify that on September 2, 2025, a copy of the foregoing document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on all attorneys in this case.

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Associated Case Party: Marathon Digital Holdings, Inc.

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